IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO. 80 OF 2004

Sunanda Dasgupta,
aged 32 years,
formerly r/o.1, Divya Tej,
Behind Usha Kiran Society,
Off Trimbak Road, Nashik,
presently r/o. Flat No.6,
Greenfields Coop.Hsg.Soceity,
42/43, Fatima Nagar,
Pune 411 013. ... Applicant.

Versus.

Tapashankar Dasgupta,
aged 35 years,
R/o.53-C/9, Dr.S.C.Banarjee
Road, Flat No.1, Kolkatta
700 010, and at 18/2,
Karunamoyee Housing Estate,
Salt Lake, Kolkota 700 091. ... Respondent.

Shri Anil K.Lulla for the Applicant.

Ms.Madhavi Deshpande and Shri Manish Upadhya for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 4th March, 2005.

ORAL JUDGMENT.:

1. Heard the learned Counsel appearing for the parties. The Applicant is the wife and the Respondent is the husband. The prayer in this Application is for transfer of the proceedings which are pending in the Courts at Nashik to the Family Court at Pune.

2. The Respondent-husband has filed Civil Misc. Application No.213 of 2003 in the Court of the District

Judge at Nashik. The said Application is under section 7 and section 25 of the Guardian and Wards Act for the declaration of guardianship and for custody of minor child. The said application is pending in the Court of the 4th Additional District Judge, Nashik. The Applicant for himself and for the minor child has filed an Application for maintenance under section 125 of the Code of Criminal Procedure, 1973, which is pending in the Court of the Chief Judicial Magistrate at Nashik. The prayer in this Application is for transfer of the said proceedings to the Family Court at Pune.

3. The case of the Applicant is that the said proceedings were filed in the Courts at Nashik as at the material time the Applicant was residing at Nashik along with her parents. The case of the Applicant is that now she is residing at Pune along with the minor daughter and on the ground of convenience the transfer is sought of the two proceedings pending in the Courts at Nashik to the Family Court at Pune.

4. The Application is opposed by the Respondent by filing an affidavit-in-reply. In the affidavit-in-reply the emphasis is on the conduct of the Applicant in so far as the pending proceedings are concerned. The contention of the Respondent is that the present application for transfer is made only with a view to harass him. It is stated that the Applicant might have

shifted to Pune as her father has taken temporary assignment at Pune and after her father's retirement she would go back to Nashik for permanent residence.

5. I have heard the learned Counsel appearing for the parties. It is not in dispute that the Respondent is the resident of Kolkatta and at present the Applicant is residing at Pune. The learned Counsel appearing for the Applicant states that the Applicant has no intention of going back to Nashik and settle down there and after the proceedings are transferred to the Family Court at Pune, the Applicant will not apply for re-transfer of the said proceedings to the Court at Nashik. The said statement is accepted.

6. The Respondent is a resident of Kolkatta. In any event for attending the proceedings he is required to attend the Courts at Nashik. If the Applications are transferred to the Family Court at Pune, he will have to visit Pune for attending the proceedings. For the Respondent staying at Kolkatta there is hardly a difference between the two places. It is well settled that in application under section 24 of the Code of Civil Procedure, 1908 arising out of matrimonial disputes what is required to be seen is the convenience of the wife. At present the wife is residing at Pune along with the minor daughter and as stated earlier, the Advocate for the Applicant has stated that the wife has

no intention of going back to Nashik. Therefore, it is obvious that it will be inconvenient for the wife to travel from Pune to Nashik for attending the proceedings especially with a minor daughter in her custody. Therefore, a case for transfer is made out.

7. At this stage the learned Counsel for the Applicant on instructions of the father of the Applicant, who is stated to be present in Court, stated that the father of the Applicant has now retired and he has settled down at the address of the Applicant mentioned in this Application. The learned Counsel for the Applicant also stated that the Respondent will be allowed to meet the minor daughter at Pune at a place and time which is mutually convenient to both the parties. The said statement is accepted.

8. In view of the above, I pass the following order:

(i) Civil Misc. Application No.213 of 2003 pending in the Court of the learned 4th Additional District Judge, Nashik, and the Misc.Application No.552 of 2002 pending in the Court of the Chief Judicial Magistrate at Nashik are transferred to the Family Court at Pune.

(ii) After receipt of the records of the said two

cases, the Family Court at Pune will issue notices to both the parties about the date fixed in the said proceedings at the Pune address of the Applicant and Kolkatta address of the Respondent mentioned in the title of this Application.

(iii) Misc.Civil Application is allowed in the above terms with no order as to costs.

(iv) Parties and the concerned Courts to act on the authenticated copy of this order.

Judge.